



## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications (U39M).

**FILED**

Application 11-03-014<sup>1-21-15</sup>  
(Filed March 24, 2011) 04:59 PM

And Related Matters.

Application 11-03-015  
Application 11-07-020

### **CENTER FOR ELECTROSMOG PREVENTION APPLICATION FOR REHEARING OF DECISION 14-12-078, DECISION REGARDING SMARTMETER OPT-OUT PROVISIONS**

Pursuant to the California Public Utilities Commission (CPUC or Commission) Rules of Practice and Procedure, Rules 16.1 and 16.2, the Center for Electromog Prevention (CEP) requests rehearing of Decision (D.) 14-12-078 (Decision) because it expressly excluded consideration of health and safety impacts even though consideration of health and safety impacts by the CPUC is a statutory mandate by California Public Utilities Code section 451 (PU Code 451). After asking questions at the start of the proceeding that pertained to the Americans With Disabilities Act and smart meter fees, thus by necessity causing participants to refer to medically ill or disabled persons, the CPUC then refused to allow discussion and consider the responses of participants to these questions in their opening briefs. In addition, the Decision on page 7 contradicts the statements in D. 10-06-047 on page 2 and D.13-07-024 on page 6 that the health and safety assessments of the smart grid will be considered in the above captioned proceedings.

Rule 16.1(c) states that an application for rehearing shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law. The Decision on page 7 states: “we will not address the alleged health and safety impacts of smart meters here.” PU Code 451 requires that the Commission find that the smart grid is necessary to promote the safety, health, comfort, and convenience of the regulated utilities’ patrons, employees, and the public. Therefore, CEP asks that the Commission issue a decision that complies with its statutory mandate.

CEP requests that decisions in the Phase 2 proceeding leading to some socialization and reduction of the costs of the opt-out be continued, and expanded, a position it has been the sole supporter of, in this proceeding.

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## **California Public Utilities Code Requirements**

**I. Decision p. 7: "The Scoping Memo expressly excluded consideration of health and safety impacts of smart meters from this phase of the proceeding.<sup>1</sup> Accordingly, we will not address the alleged health and safety impacts of smart meters here."**

This statement is inconsistent with the CPUC statutory mandate<sup>2</sup> stated in PU Code 451 which requires any approval of a regulated utility request to ensure that the public's health and

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<sup>1</sup> "Phase 2 is to consider cost and cost allocation issues associated with providing an opt-out option and whether to expand the opt-out option to allow for a community opt-out option. Due to the narrow focus of this phase, it would be inappropriate to expand the scope to consider health issues." Scoping Memo at 3. Testimony and briefing concerning health and safety issues, or devoted to arguing against opt-out charges altogether, contribute nothing to this decision. We will bear this in mind when evaluating intervenor compensation claims.

safety are protected. California Senate Bill 17(2009) codified and chaptered into California Public Utilities (PU) Code § 8360-69, states, “It is the policy of the state to modernize the state's electrical transmission and distribution system to maintain safe, reliable, efficient, and secure electrical service...” CEP believes that these requirements have not been met, and the CPUC has not required adequate proof of meeting these criteria.

PU Code 451 doesn't specify the procedures required to ensure that the public's health and safety are protected but does require that consideration take place and be included in the record of the proceedings. That hasn't happened here. The United States Supreme Court states in *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 US 519: “Administrative decisions should be set aside in this context, as in every other, only for substantial procedural or substantive reasons as mandated by statute, *Consolo v. FMC*, 383 U. S. 607, 620 (1966), not simply because the court is unhappy with the result reached. And a single alleged oversight on a peripheral issue, urged by parties who never fully cooperated or indeed raised the issue below, must not be made the basis for overturning a decision properly made after an otherwise exhaustive proceeding.”

CEP has raised<sup>3</sup> the issues of health and safety in these proceedings pursuant to the CPUC's statutory mandate and the CPUC has excluded consideration of the PU

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<sup>2</sup> *Markair, Inc. v. CAB*, 744 F.2d 1383, 1385 (9th Cir. 1984), and in “We must, however, reject administrative constructions of a statute that are inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement.”

- in *United States v. Louisiana-Pacific Corp.*, 754 F. 2d 1445 - Court of Appeals, 9th Circuit 1985

<sup>3</sup> CEP provided an explanation of its health concerns on pages 4 and 5 of its brief filed on July 5, 2012: **Recommendations Regarding Electromagnetic and Radiofrequency Exposure (7/14/12)**

Physicians of the American Academy of Environmental Medicine recognize that patients are being adversely impacted by electromagnetic frequency (EMF) and radiofrequency (RF) fields and are becoming more electromagnetically sensitive.

The AAEM recommends that physicians consider patients' total electromagnetic exposure in their diagnosis and treatment, as well as recognition that electromagnetic and

Code 451 statutory mandate as indicated by the Decision on page 7 in footnote 5 (footnote 1 above). That footnote indicates that CEP is being denied intervenor compensation contrary to PU Code 1801.3. *See footnote 1 supra*. Parties including CEP presented health and safety impacts that the Decision's footnote 5 says contributed

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Radiofrequency field exposure may be an underlying cause of a patient's disease process.

Based on double-blind, placebo controlled research in humans, medical conditions and disabilities that would more than likely benefit from avoiding electromagnetic and Radiofrequency exposure includes, but is not limited to:

- Neurological conditions such as paresthesias, somnolence, cephalgia, dizziness, unconsciousness, depression
- Musculoskeletal effects including pain, muscle tightness, spasm, fibrillation
- Heart disease and vascular effects including arrhythmia, tachycardia, flushing, edema
- Pulmonary conditions including chest tightness, dyspnea, decreased pulmonary function
- Gastrointestinal conditions including nausea, belching
- Ocular (burning)
- Oral (pressure in ears, tooth pain)
- Dermal (itching, burning, pain)
- Autonomic nervous system dysfunction (dysautonomia).

Based on numerous studies showing harmful biological effects from EMF and RF exposure, medical conditions and disabilities that would more than likely benefit from avoiding exposure include, but are not limited to:

- Neurodegenerative diseases (Parkinson's disease, Alzheimer's disease, and Amyotrophic Lateral Sclerosis. 2-6
- Neurological conditions (Headaches, depression, sleep disruption, fatigue, dizziness, tremors, autonomic nervous system dysfunction, decreased memory, attention deficit disorder, anxiety, visual disruption). 7-10
- Fetal abnormalities and pregnancy. 11, 12
- Genetic defects and cancer. 2, 3, 13-19
- Liver disease and genitourinary disease. 12, 20

Because Smart Meters produce Radiofrequency emissions, it is recommended that patients with the above conditions and disabilities be accommodated to protect their health. The AAEM recommends: that no Smart Meters be on these patients' homes, that Smart Meters be removed within a reasonable distance of patients' homes depending on the patients' perception and/or symptoms, and that no collection meters be placed near patients' homes depending on patients' perception and/or symptoms.

nothing to the Decision, because the Decision didn't consider any health and safety impacts, even though their own questions posed to participants necessitated an answer containing these. This is similar to the CPUC's refusal to conduct safety reviews and inspections of the regulated utilities' gas systems. The CPUC president agreed in a statement made on January 15, 2015: <http://www.sfgate.com/bayarea/article/New-head-of-CPUC-says-gas-safety-shortcomings-6018465.php>. "He said an audit by the federal Pipeline and Hazardous Materials Safety Administration, which found that the agency had a two-year backlog in finishing its probes of gas explosions and other incidents, was "hard on us, but accurate."

"We don't have consistent practices for safety enforcement record keeping," Picker said. "We don't have comprehensive training in investigation and case management, and we don't have a written enforcement policy."

CEP is asking that a full, open review of these urgent electric system safety issues be immediately undertaken, and that related key portions of the Phase 2 opt-out proceeding that full discussion was not held for, such as addressing the ADA and other applicable discrimination laws cited in multiple participants' opening briefs in July, 2012, and the need for help with banks of meters and the issue of community-wide opt-outs, be reopened, on an emergency basis. CEP takes the position that answering the question that this Phase 2 opt-out proceeding asked<sup>4</sup>, concerning the question of whether ADA and other discrimination laws apply, necessitates examination of their applicability to persons with medical conditions and disabilities, which the CPUC has disallowed after the fact, negligently ignoring crucial testimony that answers their own questions posed to participants in this proceeding. CEP requests that decisions in the Phase 2 proceeding leading to some socialization of the costs of the opt-out be continued, and expanded, a position it has been the sole supporter of, in this proceeding.

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<sup>4</sup> ASSIGNED COMMISSIONER'S RULING AMENDING SCOPE OF PROCEEDING TO ADD A SECOND PHASE, June 8, 2012, pp. 5 and 6.

The statutory mandate of PU Code 451 for the CPUC means that when it issues a decision, it states that the CPUC has considered health and has approved an application for a program after consideration of the health impacts of that program. The mechanism for reviewing the health impacts of the smart grid deployment plans stated in D.13-07-024 was to have the health impacts considered in the above captioned proceedings. But, the D.14-12-078 states that the health evaluation will not be performed at all.

D.14-12-078 means that both the smart meter opt-out program and the Smart Grid Deployment Plans will have been approved by the CPUC without following its PU Code 451 mandate of determining that the every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

Every time the CPUC adopts a decision, it is stating that the orders contained therein are issued pursuant to all of its mandates<sup>5</sup> unless the decision specifically states otherwise. Therefore, the statement on page 7 that “we will not address the alleged health and safety impacts of smart meters here” means that the Decision doesn’t address health and safety issues.

These other mandates include the Safety Policy adopted by the CPUC on July 10, 2014, that states that the Commissioners: “Certify through signature on Proposed Decisions that the findings, conclusions, and actions laid out in proceedings can meet the CPUC’s overarching goals and expectations, and assure that each vote on proceedings, resolutions, ratemaking, or other decisions of the CPUC addresses the CPUC’s overarching goals and expectations regarding safety and resiliency.” Not considering the health and safety impact of the smart grid is contrary to these mandates.

## **II. Decision pp. 49 -50 Alternative Billing Arrangements**

CEP disagrees with the statement that only DRA, TURN, and Aglet “offer alternatives to monthly meter reads and/or monthly billing for opt-out customers.” CEP led these

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<sup>5</sup> The CPUC is a California governmental agency mandated by the California Constitution, California statutes, and mandates delegated by federal agencies pursuant to agreements made between the CPUC and the federal agencies. The CPUC also adopts regulations and policies that it must follow until it changes them.

recommendations in its testimony and briefs and conducted cross-examination of the witnesses during the evidentiary hearings to demonstrate it.

CEP believes that a full independent audit should be undertaken of all utilities with opt-outs, to determine how meters are being read, and by whom, and what the actual costs are. A similar audit is now ordered by Ordering Paragraph 22 of D.14-08-032 concerning Pacific Gas and Electric Company's (PG&E's) 2014 General Rate Case (GRC) proceeding Application (A.)12-11-009.

### **III. Recommendations**

Therefore CEP recommends that this proceeding be continued, without delay, with a consideration of the health and safety impacts of the smart grid including smart meters, allowing full discussion and examination of the need to address exposures to banks of smart meters and community-wide opt-outs, with further examination of actual costs of the opt-out program, alternative billing options, and an audit of participant contributions to these proceedings.

Respectfully submitted,

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